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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. 325

RAYMOND FRANCO,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR CERTIORARI

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SUPREME COURT OF THE UNITED STATES

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PETITION FOR CERTIORARI

I.

JURISDICTION

Petitioner requests this Court to issue a Writ of Certiorari to the United States Court of Appeals, Fifth Circuit, to review its decision filed June 16, 1969, in Raymond Franco v. United States of America (Appendix A1). Jurisdiction is conferred upon this Court by 28 U.S.C. Section 1254(1).

II.

QUESTION OF LAW

Is a stolen blank traveler's check which is later endorsed and negotiated, a "falsely made and forged security"?

III.

STATEMENT OF FACTS

Petitioner was convicted of a violation of Title 18 U.S.C. Section 2314 (Appendix A3) of unlawfully transporting in interstate commerce "a falsely made and forged security, to wit: a traveler's check * * *".

The evidence presented most favorable to the government shows that traveler's checks, blank on their face with a face value of $620,000 (R. 69) were stolen on April 12, 1967. Five of these checks, together with cash of ninety dollars (R. 171) were used by the petitioner, Raymond Franco, to pay for installation of a stereo tape recorder at Holler Oldsmobile in Orlando, where the defendant was a known customer (R. 102, 167). The petitioner identified himself to the salesman as Ray Imbrau (R. 95) and was known by another employee as Sam (R. 103). The checks were signed and counter-signed with the name of Victor Duarte (Exhibits 5-9). The cashier made no inquiry of Raymond Franco regarding the propriety of accepting such checks in part payment for the invoice (R. 113-121).

IV.

RECORD ON APPEAL

The record printed and certified for use in the Court of Appeals accompanies and is filed with this petition.

V.

ARGUMENT

The decision below is in direct conflict with *Streett* v. *United States*, 331 F.2d 151, 157 (8th Cir. 1964), holding that a false endorsement on a stolen traveler's check does not come within the purview of Section 2314 which reaches only forged securities rather than forged endorsements. The basis of the decision below is also in conflict with the rationale expressed in *Pines* v. *United States*, 123 F.2d 825 (8th Cir. 1942), holding the obligation created by the issuance of a traveler's check is complete as against the bank when issued.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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Miami, Florida
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APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27026

SUMMARY CALENDAR

UNITED STATES OF AMERICA
Plaintiff-Appellee,

versus

RAYMOND FRANCO,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

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(June 16, 1969)

Before BROWN, Chief Judge, THORNBERRY and MORGAN, Circuit Judges.

PER CURIAM: Appellant was convicted by the court under 18 U.S.C. § 2314 of causing the transportation in interstate commerce of falsely made and forged securities with unlawful and fraudulent intent, knowing the same to have been falsely made and forged. The essential facts can be stated with brevity: On April 12, 1967, two wooden

boxes containing 42,000 blank American Express traveler's checks worth $620,000 were stolen in New York City; about four weeks later, appellant passed five of these checks at an Oldsmobile agency in Orlando, Florida. He assigns four errors on appeal from his conviction, but we find none of them persuasive.[1]

The $10 traveler's checks passed by Mr. Franco at the Oldsmobile agency bore the signature of Victor Duarte as purchaser and the counter signature of Victor Duarte. Appellant's first point is that a stolen blank traveler's check later filled in by someone is not a forged security within the meaning of the statute. We held otherwise in *Castle v. United States*, 5th Cir. 1961, 287 F.2d 657, 660. His second and related point is that there was no evidence to show that the signature and counter signature of Victor Duarte were forged and hence no evidence to show that he was in possession of a forged security. As indicated by *Castle v. United States* and also *Berry v. United States*, 5th Cir. 1959, 271 F.2d 775, a stolen blank traveler's check becomes a forged security when someone fills in the signature spaces even if he uses his own signature. This is because a traveler's check is cashed on the credit of the issuer. Since American Express had never issued these traveler's checks to anyone, the first person to fill them in, even if he used his own signature, necessarily created forged securities and the first negotiator of the forged securities was necessarily a forger.

Thirdly, appellant complains of the testimony of a service station manager to the effect that he cashed additional

1. Pursuant to new Rule 18 of the Rules of this Court, we have concluded on the merits that this case is of such character as not to justify oral argument and have directed the Clerk to place the case on the Summary Calendar and to notify the parties in writing. *See Murphy v. Houma Well Service*, 5th Cir. 1969, ... F.2d ....., Part I [No. 26,902, slip opinion dated March 11, 1969].

checks not charged in the indictment for an unidentified person traveling with Franco. Even if we concede that it is possible in a nonjury trial for undue prejudice to result from the improper admission of evidence, we think the evidence complained of here was admissible on the issue of intent because it involved related conduct not too remote in point of time. *See Lindsey v. United States,* 5th Cir. 1955, 227 F.2d 113, 117.

Finally, it is contended that the evidence is insufficient to show that appellant knew he was transporting forged securities. Taking the evidence in the light most favorable to the Government, particularly appellant's possession of the securities, we think the trial court could reasonably infer such knowledge.

AFFIRMED.

Statute 18 USC 2314—Par. 3

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited;

SUPREME COURT, U. S.

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No. 325

In the Supreme Court of the United States

OCTOBER TERM, 1969

RAYMOND FRANCO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 16, 1969. The petition for a writ of certiorari was filed on July 10, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a travelers cheque which had been stolen in blank and thereafter signed and countersigned by

a purported purchaser is a falsely made or forged security within the meaning of 18 U.S.C. 2314.

STATEMENT

On October 17, 1968, after a non-jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted on all counts of a five-count indictment charging interstate transportation of falsely made or forged securities, in violation of 18 U.S.C. 2314. He was sentenced to imprisonment for two and one half years on each count, the sentences to run concurrently. The court of appeals affirmed *per curiam* (Pet. App. A3).

The evidence showed that the American Bank Note Company, which prints American Express Traveler's Cheques (Tr. [illegible]), prepared for overseas shipment two wooden cases containing 42,000 blank American Express Traveler's Cheques having a face value of $620,000 (Tr. 19–25). The cases were stolen from a loading dock in New York City (Tr. 42–48).

About four weeks later, as payment for a purchase at an Oldsmobile agency in Florida, petitioner gave five American Express Traveler's Cheques, the numbers of which corresponded with those included in the stolen shipment (Tr. 69–70). When used as payment, each of the five $10 traveler's cheques was complete on its face, bearing the name and signature of one Victor Duarte as the purchaser and countersigner.[1]

[1] There was testimony to the effect that petitioner was known by an employee of the automobile agency as "Sam" (Tr. 103), and identified himself to the salesman as "Ray Imbrau" (Tr. 95).

The checks were forwarded to the American Express Company offices in New York City and were honored by the company.

ARGUMENT

1. Petitioner contends that the traveler's cheques involved in this case were not "falsely made and forged securities" within the meaning of 18 U.S.C. 2314, arguing that the facts show only a forged endorsement, and not forged making. He relies on *Streett* v. *United States*, 331 F. 2d 151 (C.A. 8), where the court held that Section 2314 does not reach the transportation of validly issued traveler's cheques on which only the countersignature of the payee is forged. Whatever the validity of *Streett*,[2] it does not apply to this case where the traveler's cheques were never validly issued. As to the situation here—where the cheques were blank when stolen and both the signature and countersignature were forged—the completed instrument was a falsely made and forged security within the purview of Section 2314. As stated in *United States* v. *Petti*, 168 F. 2d 221, 223 (C.A. 2):

> * * * The statute [National Stolen Property Act—18 U.S.C. 2314] expressly includes any "traveler's check," and in our opinion this should be construed to cover such a check before as well as after its issuance to a purchaser. The purpose of the statute is to discourage the theft of evidences of indebtedness which may be made vehicles of fraud. A traveler's check

[2] See *United States* v. *Di Pietto*, 396 F. 2d 283, 286 (C.A. 7), certiorari denied on this issue, 394 U.S. 310, where the validity of *Streett* is questioned.

> is intended to be akin to currency as a circulating medium and to be accepted from anyone tendering it without further identification than the identity of the signature and countersignature. See *Peoples Savings Bank* v. *American Surety Co.*, D.C.W.D. Mich., 15 F. Supp. 911, 913. If both are blank, the thief can use the check to commit fraud even more easily than when forgery of the countersignature is required to make the document usable. In our opinion, therefore, the checks in question were "securities" within the meaning of the statute. * * *

See *Berry* v. *United States*, 271 F. 2d 775, 777 (C.A. 5), certiorari denied, 362 U.S. 903. See also, as to blank American Express money orders filled in with fictitious names as sender and payee, *Castle* v. *United States*, 287 F. 2d 657 (C.A. 5), vacated and remanded on other grounds, 368 U.S. 13; *United States* v. *Di Pietto*, 396 F. 2d 283, 286 (C.A. 7), certiorari denied on this issue, 394 U.S. 310.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1969.

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